



King County Board of Ethics
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KING COUNTY BOARD OF ETHICS MEETING NOTICE

When: Monday, August 21, 2000, at 4:30 p.m.

Where: Bank of California Building
900 Fourth Avenue, 4th Avenue and Marion Street, Seattle
5th floor conference room (southwest corner of the building)

AGENDA

1. **Approval of Agenda**
2. **Approval of Meeting Minutes of June 19, 2000.**
3. **Request for Opinion for Exemption from Post Employment Provision Under the Code.** Discussion and determination.
4. **Post Employment Provision.** Review and discussion.
5. **Appeal Hearings.** Review draft rules for withdrawal and dismissal.
6. **Filing of Orders and Decisions Under the Code of Ethics.** Review draft changes to requirements.
7. **Staff Report**
 - Request for Advisory Opinion from Councilmember Sullivan—status report
 - Financial Disclosure and Consultant Disclosure Programs—status report and approval of new Consultant Disclosure form
 - 2001 Budget
 - Ethics issues—use of county vehicles
8. **Meetings with Elected Officials.** Members report on meetings.
9. **Board Appointments.** Status.

cc: Ron Sims, King County Executive
King County Councilmembers
Duncan Fowler, Director—Ombudsman, Office of Citizen Complaints
Sheryl V. Whitney, Director, DIAS
James J. Buck, Deputy Director, DIAS

Carl A. Johansen, Senior Deputy Prosecuting Attorney
Ray Florent, Senior Engineer, Land Use Services Division, DDES
Greg Kipp, Director, DDES
Michael Frawley, Manager, Administrative Services Division, DDES

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are available by calling (206) 296-1586 or TTY 1-800-833-6388.

ALTERNATE FORMATS AVAILABLE

**Minutes of the August 21, 2000, Meeting
of the King County Board of Ethics**

The August 21, 2000, meeting of the King County Board of Ethics was called to order by
Chair Price Spratlen at 4:30 p.m. Board members in attendance were:

Lois Price Spratlen, Ph.D., Chair
Margaret T. Gordon, Ph.D.
Lembhard G. Howell, Esq.
Rev. Paul F. Pruitt
Mr. Roland H. Carlson had an excused absence

Others in attendance:

Ms. Catherine A. Clemens, Administrator, King County Board of Ethics
Mr. Carl A. Johansen, Senior Deputy Prosecuting Attorney
Mr. Duncan Fowler, Ombudsman
Mr. James J. Buck, Deputy Director, Department of Information and Administrative Services
Mr. Ray Florent, Senior Engineer, Land Use Services Division, Department of Development
and Environmental Services
Mr. Michael Frawley, Manager, Administrative Services Division, Department of
Development and Environmental Services

1. *Proposed Agenda.* Mr. Howell moved the approval of the proposed agenda; Dr. Gordon
seconded the motion and the agenda was approved.

Chair Price Spratlen asked for introductions from those present. Rev. Pruitt arrived.

2. *Approval of Meeting Minutes of June 19, 2000.* Mr. Howell moved to approve the June
19, 2000, meeting minutes; Dr. Gordon seconded the motion, and the minutes were
approved.

3. *Request for Opinion for Exemption from Post Employment Provision Under the Code..*
Ms. Clemens briefed the Board. Mr. Raymond E. Florent is currently employed as a Senior
Engineer and Professional Land Surveyor with the Land Use Services Division (LUSD)

where he supervises engineers and land surveyors in the Platting Unit. These employees in turn perform final land survey reviews and quality control plan checks of subdivisions before they are forwarded to the Records Office. Due to his personal circumstances, Mr. Florent plans to leave county employment and work in the private sector. In that capacity, he anticipates submitting plans and documents to DDES within the restricted one-year period, and requests an exemption from the post employment restriction.

Mr. Florent raised several issues to support his request. The Administrator conducted research into these issues by reviewing documents, interviewing DDES management and conferred with Board Counsel. She outlined for the Board the main issues and the results of the investigation. The first issue related to exemptions from provisions of the Code of Ethics. The Code does not grant the Board the authority to exempt employees from its provisions, regardless of extenuating circumstances. The second issue related to changes to the Code after time of hire. The Board's jurisdiction extends to interpreting and applying the existing Code of Ethics, and it may not make determinations regarding terms and agreements of those hired prior to the current Code. The third issue related to professional licenses. It is not within the Board's jurisdiction to determine whether a county employee, licensed under state law, should or should not be governed by the Code of Ethics because of that license. The purpose of the Board is to interpret and apply the Code of Ethics, which does not differentiate between licensed professionals and non-licensed laypersons. Ms. Clemens then reviewed current DDES policies on post employment as well as past advisory opinions issued by the Board.

Mr. Florent stated that, in his conversations with State officials, they indicated he could practice at any time in the State under the terms of his State professional license. He also stated that DDES Director Greg Kipp stated that he could stamp documents within the one year period and could talk with DDES employees about those documents should questions arise. Mr. Florent asked the Board if they would consider an amendment to the Code to change what he considers to be unduly restrictive prohibitions to former county employees? He felt that the prohibition should focus on county business in which you participated as a former employee, not on new business. He offered his assistance in such a project. He also offered to provide copies of a federal law and Louisiana State ordinance and advisory opinions regarding post employment restrictions.

Mr. Howell voiced his appreciation of Mr. Florent's position and asked Mr. Johansen if any waiver provisions existed in any other jurisdictions? Mr. Johansen stated he was not aware that waivers from post employment restrictions were authorized in other jurisdictions. Ms. Clemens stated she had found certain jurisdictions allowed for waivers, but requirements were rigorous and infrequently used.

Mr. Florent stated that he was told at time of hire in 1978 that he could return to work within a one year period after leaving the county and that he could submit work to the department while an employee. He stated he never would have taken a county position had such restrictions existed at that time. Mr. Frawley informed the Board that DDES policies regarding post employment and outside employment conform to the Code of Ethics. They rely on the Code as written policy and have no written policy of their own. He informed the Board that the first DDES notice about rules and policies that he was able to locate

appeared as a memo to employees in 1990 and again in 1992. They also distribute monthly reminders to managers to ensure that no former employees are hired within one year after leaving DDES. The intention is to prevent the appearance of conflict and to ensure employees are not lining up employment with regulated private industries while employed at DDES.

Rev. Pruitt thanked Mr. Florent for appearing but underscored that the Board has been consistent over the years regarding the one year prohibition for post employment. Mr. Howell moved that the Board adopt the recommendations posed by the Administrator: 1) to decline to issue an advisory opinion on the issue of exemption since it is not within their jurisdiction; 2) to direct Mr. Florent to the existing advisory opinions and department policies that conform to the one-year post employment restrictions; and 3) to send a letter to DDES leadership from the Board advising them to place their written post employment and outside employment policies in a readily accessible location available to all employees. Dr. Gordon seconded the motion and the motion passed unanimously.

The current post employment review was mentioned and Mr. Florent indicated he may delay his departure from county employment for this change in the Code. Mr. Howell outlined the lengthy review and adoption process of Code amendments, as well as the uncertainty of the outcome, so that Mr. Florent would have realistic expectations. Mr. Johansen offered that while the Board has a process it uses to consider possible recommended changes to the Code of Ethics, nothing prevents Mr. Florent from going directly to the Executive and Council with a request for Code amendment. Ms. Clemens invited Mr. Florent to remain at the meeting for the next agenda item, a review and discussion of the post employment provision. Mr. Florent remained.

Mr. Frawley left the meeting; Mr. Buck arrived.

4. *Post Employment Provision.* Ms. Clemens briefed the Board and reviewed the materials provided in Board packets. She drew their attention to previous statements of intent for having a post employment provision. These statements were taken from past Board advisory opinions, as well as declarations from other ethics agencies. Next, she noted relevant issues to consider for determining amendment content. Ms. Clemens identified certain common prohibitions emerged from review of post employment ordinances in state, local and federal jurisdictions. They included: 1) representing or assisting any person in the employee's former department and/or on matters for which they participated; 2) contracting with the employee's former agency if the employee participated in developing the scope of work or the contract selection process; and 3) using privileged information gained as an employee for the benefit of the new employer.

Ms. Clemens also identified certain common allowances that included: 1) returning as an employee to government service; and 2) participating in any matters with any part of the former government if the new employer is also a governmental body.

Dr. Gordon suggested looking at dot.com (technology) companies for their post employment restrictions, since they carefully guarded proprietary ownership. Dr. Gordon also commented that there should be a link to the work in which the former employee

participated. Mr. Fowler agreed in concept, but also noted that there is an appearance of conflict when 'decision-makers' return to work on government projects through private consultants or private industry. They may not have participated in a particular action, but are seen as able to unduly influence because of their former level of responsibility and authority.

Following that discussion, the Board considered issues for inclusion in the proposed post employment amendment. Among the issues to be included, at least for the purpose of further examination, were the following: 1) matters in which the former county employee participated and/or had responsibility (regardless of department or agency as the ordinance now reads); 2) the level of influence and decision-making held by the former county employee (the board previously differentiated between decision-makers and ministerial duties); 3) vying for or entering into any contract with the county if the former employee previously worked on developing the contract; 4) using or disclosing information acquired during county employment that is not available as a matter of public knowledge or public record, whether for personal gain or otherwise; and 5) possible exemptions for certain categories, such as sole source providers, and a process for such exemptions.

Dr. Gordon stated that the Board's intention is not to trap a former employee in a job, or prevent them from earning a living, but to develop good public policy around post employment issues that ensure public trust in the fairness of transactions by county government. Rev. Pruitt agreed. Mr. Johansen gave a brief history of the development of the post employment restriction. Dr. Gordon then moved to direct the Administrator and Board Counsel to draft a proposed amendment, incorporating the issues previously identified, for submission to the Board at the next scheduled meeting. Rev. Pruitt seconded the motion and the motion passed unanimously.

Mr. Florent left the meeting.

5. *Appeal Hearings.* Mr. Johansen briefed the Board. At its March meeting, the Board requested that Counsel for the Board and Ombudsman draft changes to the Board's appeal hearing rules to address areas of concern regarding dismissal of appeals once those appeals have been made to the Board. This request was prompted by the recent appeal process related to Mr. Andrew Schmid. Mr. Johansen reviewed with the Board two alternatives that were previously reviewed and commented upon by the Ombudsman, Counsel for the Ombudsman and Board Administrator. Alternative 1, favored by the Ombudsman, allowed a respondent to withdraw a request for an appeal hearing at any time and without any action by the Board of Ethics. Alternative 2 allowed the Board, if it deemed appropriate, to consider the appeal issues before granting the request to dismiss the appeal hearing. Mr. Howell stated Alternative 1 tracks civil rules and allows for a motion to dismiss up to the last moment. Rev. Pruitt noted its simplicity. Mr. Howell moved that the Board adopt Alternative 1 as proposed by Counsel and that the Board direct the Administrator to proceed with rule adoption procedures. Rev. Pruitt seconded the motion and the motion passed unanimously.

6. *Filing of Orders and Decisions Under the Code of Ethics.* Mr. Johansen briefed the Board. As directed by the Board at their March meeting, he reviewed current requirements

for filing and distribution requirements throughout the Code for various documents and made recommendations for change. These recommendations had been reviewed and commented upon by Board Administrator, Ombudsman and Counsel for the Ombudsman. Affected provisions include: K.C.C. 3.04.030 F. Discusses or accepts an offer of future employment with any person doing or seeking to do business with the county (file required memoranda with the Board of Ethics, not with the Clerk of the Council and Ombudsman); K.C.C. 3.04.030 G. Within one year of entering county employment, awarding a contract to, or participating in a county action, benefiting a former employer (same as for K.C.C. 3.04.030 F); K.C.C. 3.04.050 Filing Statements of Financial and Other Interests (delete requirement to file statements with Records and Elections); K.C.C. 3.04.055 Complaints, Investigations to be filed with the Ombudsman (no change recommended); K.C.C. 3.04.055 Complaints, Investigations H. (revise current requirements for serving, filing and providing copies of an order finding reasonable cause; require filing of findings of reasonable cause with the Board of Ethics and if not reversed by the Board on appeal, would be considered final and public); K.C.C. 3.04.057 E Appeal. (delete requirement to file appeal hearing decisions with Records and Elections and require filing with the Board of Ethics).

The Board discussed whether certain documents should be placed in the employee's personnel file, as suggested by the Ombudsman. However, it was decided that there may be multiple 'personnel files' within the county, and may only cause confusion. Rev. Pruitt moved to accept the changes to filing requirements as presented by Board Counsel; Dr. Gordon seconded the motion and the motion passed unanimously.

Mr. Buck stated a county task force was currently reviewing the issue of personnel files, their location and purpose. Dr. Gordon suggested, and the Board agreed, that once this task force had completed its work, the Board should again review filing requirements related to personnel files.

Mr. Howell left the meeting.

7. Staff Report.

Request for Advisory Opinion from Councilmember Sullivan. Ms. Clemens informed the Board on the status of the request. Ms. Sullivan had responded on February 22, 2000, to clarifying questions posed by the Board. However, Councilmember Sullivan's spouse, the subject of the inquiry, had not yet provided information on the first question. The Administrator corresponded with Councilmember Sullivan on June 20, 2000, to inform her that once that information had been received, the request could go forward. To date, no information has been received.

Disclosure Programs. For the *1999 Financial Disclosure Program*, as of August 14, 2000, there is 100% compliance for all 1,928 county employees required to file, a first-time achievement that early in the year; 100% compliance for the 432 board and commission members required to file; a first time achievement. Reasons for success: Training and education sessions for county employees coordinating the program; timely reporting to department heads and coordinators; immediate response to inquiries; collaborative relations between departments and the ethics office; and simplified reporting requirements under the new Code amendment. For the *Consultant Disclosure Program*, all consultants having

professional, technical and engineering contracts over \$2,500 must file consultant disclosure forms with the ethics office before the consultant may be paid. For affected county contracts issued in 2000, 97% of the 125 contracts are in compliance with the requirement to file a consultant disclosure form with the ethics office; four contracts currently have stop payment notices against them. For affected county contracts issued in 1999, 98% of the 329 contracts are in compliance with the requirement to file a consultant disclosure form with the ethics office; five contracts currently have stop payment notices against them. Reasons for success: clarifying processes and strengthening enforcement of requirement; working with the Finance Department to provide training to contract managers; providing timely requirement notice to contract managers, followed by stop payment notification on outstanding forms. Chair Price Spratlen expressed the Board's appreciation of Ms. Clemens' work on both of these programs and on the high level of success of this year's financial disclosure program. She noted that this information was conveyed to Executive Sims during the meeting held that afternoon among Executive Sims, Chair Price Spratlen and Dr. Gordon. The Board reviewed a newly developed consultant disclosure form, revised for clarity and to conform to the recently amended consultant disclosure requirement under the Code. Rev. Pruitt moved to approve the new consultant disclosure form, with minor changes; Dr. Gordon seconded the motion and the motion passed unanimously. Dr. Gordon suggested, and the Board agreed, that the \$2500 threshold for the requirement should be reviewed during the overall review of the Code for possible increase.

2001 Budget. Ms. Clemens informed the Board that the 2001 requested budget included the perennial request for a .5 FTE to support the disclosure programs. While this request would probably not be adopted, the office was not being required to take a 'mandatory' reduction of approximately 6%. Director Whitney absorbed that reduction from other areas within the department. Ms. Clemens expressed her appreciation to Mr. Buck for that exemption, and Chair Price Spratlen directed Ms. Clemens to draft a letter from the Board thanking Ms. Whitney and Mr. Buck for their actions. The 2001 budget will likely reflect no change from the 2000 budget, except for cost of living and possible merit increases.

Ethics Issues. Ms. Clemens referred to an article provided to Board members regarding a recent newspaper article on use of county vehicles for personal convenience by county officials. Rev. Pruitt noted that the Board had taken action in the past on this issue and made recommendations to department heads on the use of county property. Mr. Johansen noted that while Executive Sims served on the Council, he had drafted legislation regulating such use and he had confidence Mr. Sims would carefully monitor this situation now.

Mr. Fowler left the meeting.

8. *Meetings with Elected Officials.* The Board reviewed the list of Councilmember names with whom they were to meet and provided an update on those meetings. Chair Price Spratlen noted that she had met with Councilmember Fimia and reviewed her and Dr. Gordon's meeting with the Executive that day.

9. *Board Appointments.* Ms. Clemens noted that the Council's Law and Justice Committee met on Thursday, August 17, 2000, and voted Do Pass on confirming the reappointments of

Chair Price Spratlen and Mr. Howell. There has been no action on the Council nominations for the two expired terms held by Mr. Carlson and Rev. Pruitt.

After discussion on upcoming Board activities and issues, Rev. Pruitt moved that the September 18, 2000, meeting be canceled and the next meeting held on its regularly scheduled date of October 16, 2000. Dr. Gordon seconded the motion and the motion passed unanimously.

At 6:25 p.m., Rev. Pruitt moved to adjourn the meeting; Dr. Gordon seconded the motion; the motion was approved unanimously and the meeting was adjourned.

Approved this _____ day of _____, 2000, by the King County Board of Ethics.

Signed for the Board: _____
Dr. Lois Price Spratlen, Chair